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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

vs.

HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 3:07-cv-2446 MMC

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
REQUEST FOR JUDICIAL NOTICE**

Date: August 24, 2007
Time: 9:00 a.m.
Courtroom: 7 (19th floor)

Date originally filed: May 7, 2007

Defendants seek judicial notice of Tanya Harden v. WIS Holding Corporation, Case No. 07-4076-CV-C-SOW, but not for the mere existence of the opinion (which Plaintiffs do not dispute). The opinion's existence would have been confirmed through proper citation in Defendants' brief. Rather, Defendants seem to seek judicial notice broadly, of the legal determinations and findings of fact contained within the Missouri District Court's order. However, binding 9th Circuit authority and Federal Rules of Evidence, Rule 201(a), do not abide Defendants' sweeping request for judicial notice.

1 A court can only take judicial notice of another court's opinion for limited purposes. Lee
2 v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001). "[W]hen a court takes judicial notice
3 of another court's opinion, it may do so 'not for the truth of the facts recited therein, but for the
4 existence of the opinion, which is not subject to reasonable dispute over its authenticity.'" Id.
5 (internal citation omitted). Additionally, judicial notice cannot be taken of the legal
6 determinations of the other court. Jablonsky v. Sierra Kings Health Care Dist., 2007 WL
7 7085666 at *1 (E.D. Cal., Mar. 02, 2007); see also Charles Alan Wright & Kenneth W. Graham,
8 Federal Practice & Procedure: Evidence § 5103 at 472-73 (1977) (courts cannot take judicial
9 notice of legal determinations under Rule 201).

11 Moreover, Defendants' request controverts the spirit of Fed. R. Evid. 201(a), which states
12 that judicial notice should be taken of "adjudicative facts." The committee notes to Fed. R. Evid.
13 201(a) defines "adjudicative facts" as "those to which the law is applied in the process of
14 adjudication." Fed. R. Evid. 201(a), Advisory Committee Notes to 1972 Proposed Rules. Under
15 Lee, the Court here cannot take judicial notice of the facts of the Harden decision.

17 The Court should reject Defendants' request for judicial notice.

18 In the alternative, should the Court choose to grant Defendants' request for judicial notice
19 to the extent permissible, i.e. for the existence of and authenticity of the Harden decision,
20 Plaintiffs request that the Court grant judicial notice of the existence and authenticity of every
21 decision cited within Plaintiffs' Opposition to Defendants' Motion to Dismiss. Plaintiffs will
22 provide copies of all decisions cited to the Court upon request.
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Dated: August 3, 2007

s/ Bryan Schwartz

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CERTIFICATE OF SERVICE

Wong et al v. HSBC Mortgage Corporation et al

Case No. 07-2446 MMC

I hereby certify that on August 3, 2007, I caused the following document(s):

Plaintiffs' Memorandum In Opposition To Defendants' Request For Judicial Notice

to be served via ECF to the following:

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Dated: August 3, 2007

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